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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,096	01/22/2004	Timothy Alan Dietz	AUS920030527US1	6048

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IBM CORPORATION  
PO BOX 12195  
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RESEARCH TRIANGLE PARK, NC 27709

EXAMINER
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PARKER, BRANDI P

ART UNIT	PAPER NUMBER
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4137

MAIL DATE	DELIVERY MODE
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04/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/763,096	<b>Applicant(s)</b> DIETZ ET AL.	
	<b>Examiner</b> BRANDI P. PARKER	<b>Art Unit</b> 4137	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Acknowledgements***

1. Claims 1-18 are pending in this Office Action.
2. This Office Action is given Paper No. 20080409 for reference purposes only.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and USPTO personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as nonstatutory functional descriptive material. When a computer program is claimed in a process where the computer is executing the computer program's instructions, USPTO personnel should treat the claim as a process claim. When a computer program is

recited in conjunction with a physical structure, such as a computer memory, USPTO personnel should treat the claim as a product claim.

4. Claim 13 recites a computer program having code recorded on a computer readable medium for tracking defects in software products. The claim further discloses a computer program that comprises a "means on said display". The scope of the claim is unclear because a computer program is not capable of containing a "Means on said display". Appropriate correction is required.

5. Claims 14-18 are rejected for being dependent upon rejected claim 13.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-11 and 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated over Edinger et al (US 2002/0194047).

6. As to **claims 1, 7 and 13**, Edinger teaches a system for tracking defects in said software products comprising:

a. a computer controlled display associated with said service center (paragraph 0099, abstract);

- b. means on said display, ancillary to a customer telephone inquiry to said service center, for prompting said service agent at said service center to interactively select a software defect category to which said inquiry may relate (paragraph 0212-0228) ; and
  - c. means on said display responsive to a selection of a software defect category, to interactively prompt said service agent, during said telephone inquiry, to interactively respond to a set of statistical questions related to the defect category (paragraph 0217).
7. With respect to **claims 2, 8 and 14**, Edinger teaches a database means associated with said service center for storing data representative of the responses of said service agent ((paragraph 0017).
8. Regarding **claims 3, 9 and 15**, Edinger teaches means enabling the service agent to optionally enter said data into said database (paragraph 0017, 0212-0228).
9. As to **claims 4, 10 and 16**, Edinger teaches means on said display for prompting said service agent prompt on a real-time basis coincident with the time during which the service agent responding within said telephone inquiry (paragraph 0018).
10. With respect to **claims 5, 11 and 17**, Edinger teaches
- d. means for analyzing said stored data (paragraph 0287-0288); and
  - e. means for distributing the results of the analysis to the developers of said marketed products (paragraph 0263-0264).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edinger et al (US 2002/0194047) in view of Schneier et al (US 7159237).

11. Regarding **claims 6, 12 and 18**, Edinger teaches the disclosure of claim 5. Edinger does not teach where the service agent enters unprompted comments. However, Schneier teaches means for enabling the service agent to enter unprompted general comments relative to defects; and wherein said means for analyzing consider said general comments (column/line 13/63-14/17, Figure 7 and 8). It would have been obvious to one having ordinary skill in the art to combine the teachings of Edinger and Schneier because Schneier involve improving software telephone customer support with a live customer service agent or analyst.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Powers et al (US 6604084), Gusick et al (US 2001/0047270),

Art Unit: 4137

Aycock et al (US 5765138), Anderson et al (US 6970831), Corral (US 7337214), Beaumont et al (US 5873068) and Kesel (US 5822744).

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI P. PARKER whose telephone number is (571) 272-9796. The examiner can normally be reached on Mon-Thurs. 8-5pm.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin L. Hewitt II can be reached on (571) 272-6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. P. P./  
Examiner, Art Unit 4137

Application/Control Number: 10/763,096  
Art Unit: 4137

Page 7

/Calvin L Hewitt II/  
Supervisory Patent Examiner, Art Unit 4137